


In particular, defendant filed her first § 2255 motion challenging the amended judgment in

this case on July 30, 2013, which motion was titled a motion under 28 U.S.C. § 2255 and filed using a § 2255 motion form. That § 2255 motion was denied by order of the court on February 10, 2014, without any re-characterization of the motion. A subsequent motion for reconsideration was re-characterized by the court as successive and dismissed on June 10, 2014. Defendant was not entitled to notice of this re-characterization or any subsequent recharacterization because it was not an initial § 2255 motion. See id.

In sum, the government's motion to dismiss is GRANTED, defendant's § 2255 motion is DISMISSED as successive, and defendant's motion for judicial complaint raising lack of notice of re-characterization as a basis for filing successive § 2255 motion is DENIED. Before defendant can file a successive § 2255 application in the district court, she must "move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A) (emphasis added). A successive petition "must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain" either "newly discovered evidence . . . or a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." 28 U.S.C. § 2255(h) (emphasis added).

SO ORDERED, this the 31st day of May, 2019.


LOUISE W. FLANAGAN
United States District Judge